

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kara Hughes	Team: Team # 4	CCRB Case #: 200301371	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 02/15/2003 2:30 PM	Location of Incident: 2nd Avenue & 50th Street, Manhattan	Precinct: 17	18 Mo. SOL 8/15/2004	EO SOL 8/15/2004	
Date/Time CV Reported Sat, 02/22/2003 2:50 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 02/22/2003 2:50 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Ferrara	31789	925280	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM John Ferrara	Force: Officer John Ferrara used physical force against an unidentified person while in the presence of § 87(2)(b)	
B.POM John Ferrara	Discourtesy: Officer John Ferrara spoke rudely to an unidentified person while in the presence of § 87(2)(b)	

Synopsis

This complaint stems from the February 15, 2003 anti-war demonstration in Manhattan, which received extensive media coverage, hence the case was determined to be sensitive and placed on the agency's sensitive case list. § 87(2)(b) who was attending the demonstration, was standing at the corner of 2nd Avenue and 50th Street alongside an unidentified "older gentleman" and watched as the man was "pushed" from behind by a white male officer in uniform (*allegation a: physical force*). The officer was instructing demonstrators to leave the area; however, there was no egress due to crowding. When asked, "where do you want us to go?" the officer reportedly replied, "Why don't you go to Jersey, maybe they'll take you" (*allegation b: discourtesy*). The older gentleman and the officer became engaged in a verbal altercation, which did not result in an arrest or a summons; the man later told § 87(2)(b) that the officer's name was "Ferrara" and that his shield number was "31789."

PO Ferrara was working at the corner of 2nd Avenue and 50th Street during the demonstration; however, he had no recollection of interacting with § 87(2)(b) or the unidentified older man. PO Ferrara testified that he used force when dealing with numerous demonstrators and explained that it was the minimum amount of force needed to "clear some space" when the area around his immediate person became too crowded. § 87(2)(b)

§ 87(2)(b) stated that the manner in which PO Ferrara articulated, "Why don't you go to Jersey, maybe they'll take you" was "scornful and mocking." PO Ferrara stated that he did not make such a statement and asserted that he was not rude to demonstrators. § 87(2)(g)

§ 87(2)(b)'s *declination of the CCRB's Mediation Process*

§ 87(2)(g)
the mediation program was explained to her. § 87(2)(b) declined participation in the mediation program § 87(2)(b)

Summary of Complaint

§ 87(2)(b) filed her complaint through the CCRB's call processing system on February 22, 2003, complaining on behalf of herself and an unidentified "older gentleman" (henceforth referred to as "the victim"). In her initial complaint, she alleged that PO Ferrara was "trying to hurt people" and became "very pushy and rude with an older man." § 87(2)(b) asserted that PO Ferrara told her "just get out of here."

During her March 5, 2003 interview, § 87(2)(b) described that on February 15, 2003, she was "attempting to attend" Manhattan's anti-war demonstration. § 87(2)(b) encountered PO Ferrara as she attempted to cross 2nd Avenue from an east to west direction while at the corner of 2nd Avenue and 50th Street. The area was very crowded as there were mounted officers positioned on the north side of the intersection, who prohibited pedestrian traffic from moving north. While among a crowd crossing 50th Street, § 87(2)(b) observed PO Ferrara place his palms on an older man's shoulders and push him while instructing him "move around, move around." § 87(2)(b) approximated the man's age to be sixty and further described him as having "white hair and a pasty complexion." When the victim asked PO Ferrara where he was supposed to move to, the officer responded, "Why don't you go to Jersey, maybe they'll take you." § 87(2)(b) found PO Ferrara's comment to be both "scornful and mocking." PO Ferrara then walked north, and "went yelling somewhere else." While § 87(2)(b) did not note the officer's name or shield number, the victim turned around and, without offering explanation, told her that the officer's name was "Ferrara" and that his shield number was "31789." It was also at this time that the victim stated, "if I were younger, I would have punched [PO Ferrara]." After stating this, the victim concluded his (brief) interaction with § 87(2)(b) by walking away. § 87(2)(b) did not obtain the victim's name. No one was arrested as a result of the interaction and no summonses were issued.

Results of Investigation

A CCRB Complaint Tracking System (CTS) search yielded negative results for complaints of a similar nature at that time and location (*enc. 9a-b*). § 87(2)(g)

§ 87(2)(b) The shield number (“31789”) the victim provided to § 87(2)(b) is accurate as it belongs to the 43rd Precinct’s PO John Ferrara. § 87(2)(g)

PO Ferrara was interviewed after his memo book confirmed that he was posted at 2nd Avenue and 50th Street during the demonstration.

Photo array session

On May 1, 2003, § 87(2)(b) was shown a photo array containing a photograph of PO John Ferrara. § 87(2)(b) was unable to identify PO Ferrara and instead identified a different officer featured in the array as the subject of her complaint (*enc. 5e-f*). When asked again to describe the alleged misconduct of the officer, § 87(2)(b) reiterated her discourtesy allegation, verbatim, but stated that she could not recall whether the officer had placed his hands on the victim during their interaction.

Officer interview: PO John Ferrara

PO Ferrara stated that he had no independent recollection of the incident § 87(2)(b) alleged; his memo book entry confirms that he was at the corner of 2nd Avenue and 50th Street during the approximate time of occurrence (2:30 PM). PO Ferrara was unable to recall the names of any of the approximate ten officers who were also posted at the corner and likewise could not recall who was the supervisor of the intersection. PO Ferrara's function at the intersection was to keep north/south pedestrian traffic in motion and to prohibit traffic in an east/west direction unless the individual was able to state and document what legitimate activity they sought on the side street.

When asked if he made physical contact with any of the protesters at the intersection, PO Ferrara testified, “when the crowd wasn’t moving from the street, when they surrounded me – I was alone – I had to actually get them out of the way.” PO Ferrara explained, “you’re surrounded – you don’t have a radio, you don’t have a partner, anything could happen to you.” PO Ferrara confirmed that he made physical contact with multiple demonstrators while trying to “clear some space” but clarified that he “didn’t push them or knock them over...I wasn’t physically throwing people on the floor or anything.” When asked how he “cleared space,” PO Ferrara continued, “I just tell them to move” *at this time during his interview, PO Ferrara gestured in front of his torso, in a breaststroke type motion.* PO Ferrara did not observe any individuals fall to the ground as a result of his motion. PO Ferrara stated that he was “firmly telling [the crowd] to ‘get back on the sidewalk, get off of the street.’” PO Ferrara denied stating to any one of the protesters that they should “go to Jersey.” PO Ferrara also denied suggesting, “Why don’t you go to Jersey, maybe they’ll take you” and explained, “I’m from Jersey, I wouldn’t suggest that.”

Conclusions and Recommendations

The details provided by § 87(2)(b) concerning the victim's interaction with PO Ferrara indicate that their contact was indeed "very brief." § 87(2)(g)

[REDACTED]

recalled that after the victim relayed PO Ferrara's name and shield number he confessed that if he

were younger, he would have “punched” the officer. The victim did not initiate physical interaction with PO Ferrara, and the exchange appears to have ended moments after it began. As stated above, § 87(2)(b) was the only demonstrator who filed a complaint regarding the incident; a CTS search indicates that the alleged victim of PO Ferrara’s action did not contact the CCRB regarding the exchange (*enc. 9a-b*). § 87(2)(g)

Allegation a: PO John Ferrara used physical force against an unidentified victim while in the presence of

§ 87(2)(b) was quite vague when asked to detail the manner in which PO Ferrara “pushed” the victim; § 87(2)(g)

§ 87(2)(b) testified that the officer was shouting “move along!” while using the palms of his hands to press against one of the victim’s shoulders. The victim did not fall down as a result of the physical contact and § 87(2)(b) stated that the victim never made mention of any physical injury or discomfort as a result of the contact.

PO Ferrara stated that he made physical contact with multiple civilians during the anti-war demonstration – several of whom could be described as older, white men – but that none of these interactions were noteworthy. While he was situated at an intersection with approximately ten officers, PO Ferrara stated that he was ultimately posted “alone” and that when demonstrators crowded “too close” to him, it was necessary for him to “clear the area.” PO Ferrara physically demonstrated that he accomplished this by waving his arms in what might best be described as a breaststroke type of motion. While he made physical contact with demonstrators when “clearing space” he stated that he “didn’t push them or knock them over...[and that he] wasn’t physically throwing people on the floor.”

In OATH trial *PD v. Mandell*, Administrative Law Judge Spooner ruled on a similar case concerning an officer’s use of force during a large public gathering (*OATH index 405/93, 1/26/1993, enc. 1a-1*). Judge Spooner wrote, “since the situation was volatile and all of the officers no doubt feared for their safety, some minor use of force (such as the two-handed pushing described by respondent’s witnesses) as a means of crowd control may have been appropriate, even essential.” For an officer’s use of force to be considered excessive, it must be determined that the physical manner in which he or she makes contact with a civilian surpasses what is reasonable and appropriate given the situation. § 87(2)(g)

Allegation b: PO John Ferrara spoke rudely to an unidentified victim while in the presence of § 87(2)(b)

In her initial complaint, § 87(2)(b) stated that PO Ferrara was discourteous when he addressed the victim by stating, “Just get out of here.” However, during her CCRB interview, § 87(2)(b) described a different, and more unique discourtesy – “Why don’t you go to Jersey, maybe they’ll take you.” When asked to describe the discourtesy during her photo array session – conducted more than two months after the date of incident – § 87(2)(b) reiterated the comment verbatim. § 87(2)(g)

§ 87(2)(b) stated that she found the tone PO Ferrara addressed the victim to be both “scornful and mocking.”

PO Ferrara denied speaking rudely to any demonstrator on February 15, 2003. Likewise, he testified that he didn’t discuss or mention New Jersey with any of the demonstrators. The officer stated that, if a demonstrator asked where it would be appropriate to walk, he would have outlined how pedestrian traffic was moving in a north/south direction and that the entrance onto side streets was prohibited without a valid or documented purpose. PO Ferrara also described how the intersection of 2nd Avenue and 50th Street was not congested and instead the “block was continually moving.” § 87(2)(g)

§ 87(2)(g) [Redacted]
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Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
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